

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

SANCHEZ SMOTHERMAN,)	
)	
Plaintiff,)	
)	
v.)	No. 4:17-CV-1982 JAR
)	
MISSOURI DEPT. OF CORR., et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

Before the Court is plaintiff's notice of appeal, filed on October 25, 2017. On this same date, plaintiff filed a copy of his certified account statement, originally due to this Court on August 26, 2017.

Plaintiff, who is currently incarcerated at the Boonville Treatment Center, filed this civil rights action pursuant to 42 U.S.C. § 1983 on July 17, 2017. On July 26, 2017, the Court ordered plaintiff to either pay the full filing fee in this action or submit a motion to proceed in forma pauperis, along with a copy of his prison account statement, no later than August 26, 2017, in order to proceed with his action. Plaintiff failed to do so in a timely manner. Accordingly, on September 7, 2017, the Court dismissed plaintiff's action pursuant to Federal Rule of Civil Procedure 41(b) for failure to comply with a Court Order.

After dismissal of this action, plaintiff sent two letters to the Court indicating that he was unable to comply with the Court's July 17, 2017 Memorandum and Order because the Boonville Treatment Center failed to supply him with his prison account statement. However, as of October 17, 2017, plaintiff had still failed to provide the Court with the necessary account statement or motion to proceed in forma pauperis. Thus, on that date, the Court notified plaintiff that he

should file a new complaint in this Court along with his motion to proceed in forma pauperis and account statement, after he was able to obtain the necessary documentation.

Just one week later, plaintiff filed the instant notice of appeal of the Rule 41 Order of Dismissal, along with the prison account statement. As plaintiff has now produced the necessary documentation, the Court will provide plaintiff the option of withdrawing his notice of appeal in order to reopen the present action in this Court. Plaintiff will be given twenty-one (21) days to decide if he wishes to withdraw his appeal in accordance with Federal Rule of Appellate Procedure 42.¹

If plaintiff wishes to withdraw his appeal, he must file a motion to withdraw the appeal in this Court within the next twenty-one (21) days. The Court will then deny his motion to proceed in forma pauperis on appeal as moot and reopen this matter for review of plaintiff's original complaint pursuant to 28 U.S.C. § 1915.²

Accordingly,


IT IS HEREBY ORDERED that plaintiff shall notify the Court within twenty-one (21) days of the date of this Memorandum and Order whether he wishes to withdraw his Notice of Appeal. **If plaintiff wishes to withdraw his notice of appeal, he shall file a motion to withdraw his notice of appeal no later than twenty-one days from the date of this Memorandum and Order.**

¹Fed.R.App.P.42(a) states that "Before an appeal has been docketed by the circuit clerk, the district court may dismiss the appeal on the filing of a stipulation signed by all parties or on the appellant's motion with notice to all parties." As no other party has entered their appearance in this matter, plaintiff need only file a motion to withdraw his notice of appeal in order to have jurisdiction once again placed in the District Court.

² If plaintiff chooses to appeal, he will be charged an initial partial filing fee on appeal, and subsequently, funds will be taken out of his prison account until such time as the full \$505 appellate filing fee is paid.

IT IS FURTHER ORDERED that the Court will hold plaintiff's motion to proceed in forma pauperis on appeal in abeyance until such time as plaintiff notifies the Court whether he wishes to withdraw his notice of appeal. If the Court does not hear from plaintiff within the specified time, the Court will process plaintiff's appeal and assess an initial partial filing fee on appeal.

Dated this 26th day of October, 2017.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE